IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4233 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRICULTURAL PRODUCE MARKET COMMITTEE, KAMREJ - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :

MR DILIP B RANA for Petitioner(s) : 1,
MR MR MENGDEY PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 30/06/2006

ORAL JUDGMENT

1. The petitioner through the Chairman of the Market Committee has approached to this Court

for challenging the notification of the Government dated 28.02.2006, whereby the term of the elected body of the Market Committee is further not extended after 28.02.2006 and the administrator has been appointed.

2. Upon hearing Mr. Rana, learned counsel appearing for the petitioner and Mr. Mengdey, learned AGP, it appears that the statutory term of the elected body of the Market Committee had expired on 29.06.2005. Thereafter, the Government found it proper to extend the term of the elected body for a period from 30.06.2005 to 28.02.2006, since there are inbuilt powers with the Government to extend the term of the elected body of the Market Committee. The term beyond 28.02.2006 was not extended and Government found it proper to appoint the Administrator and it is under these circumstances, the present petition.

3. The learned counsel appearing for the petitioner submitted that in any case, even if this Court is not inclined to interfere with the order of appointing the Administrator, the election of the Market Committee is required to be held within some reasonable time and therefore he pressed for the only prayer for directing the authority to hold the election of the Market Committee since pending the petition, at the time when this Court admitted the matter, the interim relief was not granted and the

Administrator was already appointed.

4. Mr. Mengdey, learned AGP submitted that as per the affidavit-in-reply filed on behalf of respondent No. 1, the financial condition of the Market Committee is weak and therefore, it may not be possible for the authority to hold the election.

5. I find that such a stand on the part of the statutory authority who is duty bound to hold the election deserves to be rejected on the face of it. It is hardly required to be stated that the legislature invests the power upon the Executive as per the statute to hold the election and such election in normal circumstances are required to be held and completed before even the expiry of the statutory term of the elected body. It may be that due to certain circumstances beyond control, the Government may extend the period or may appoint Administrator for some interregnum period but, such power through executive fiat cannot be allowed to be continued for indefinite period on the ground that the financial condition of the institution is such that it is not in the interest of the Market Committee to hold the election. It is the duty of all who are invested with the power to hold the election in a democratic set-up to see that the election is held well in time and the will of the voter

is allowed to be reflected through the election. Such a democratic principle cannot be allowed to be deviated on the ground that the financial condition of the institution is such that the election would not be in the interest of the Market Committee.

6. If such contentions are accepted, the consequence would be that the Executive will continue to hold the power though the requirement under the law is that the administration of the Market Committee is made through its elected representatives and therefore, I find that such a ground on the part of the authority who is invested with the duty to hold the election is arbitrary and cannot be sustained in the eye of law.

7. In view of the aforesaid, it is hereby directed that respondent No. 2 shall hold the election of the Agricultural Produce Market Committee, Kamrej as early as possible and shall complete the process of election including that of declaration of the result of the election within a period of four months from the receipt of the order of this Court. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly Considering the facts and circumstances, there shall be no order as to costs. D.S. to respondent No. 2.

(JAYANT PATEL, J.)

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